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Good morning, Madam Chairwoman and Members of the Subcommittee. I am pleased to be here to discuss the issue of who should evaluate mergers between railroads, and under what standards: the current public interest standards laid out in the Interstate Commerce Act, or the Clayton Act.

This issue is part of the larger debate over the proper role of government and how to make government work better and cost less. Last month President Clinton announced proposals to save $24 billion over five years by reorganizing how the five agencies deliver services. All other agencies of the federal government are undergoing that same type of scrutiny. The President said "We have to change yesterday's government and make it work for the America of today and tomorrow." We all share the same goal: to make government work better and to get government out of areas where it does not belong. To achieve this, we must examine how we have done things in the past and reinvent our mission in a more effective way. We must reduce government functions when they are no longer needed and streamline those that are essential. The challenge is to examine long-held ideas and be ready to

change long-established practices when they have outlived their usefulness, or worse.

Success will begin with a look at individual agencies and programs. As you know, we are engaged in our own self-examination at the Department of Transportation. We have sought the views of many Members and staff here in Congress and you will be hearing about the results in the coming weeks and months. With regard to the future of the Interstate Commerce Commission (ICC) and its functions -- there has been a debate going on now for a number of years which we urge be resolved now.

Last year, there were proposals to summarily zero out funding for the ICC in advance of a determination of what ultimately should be done with its functions. On behalf of the Administration, I urged that before Congress took such budgetary action, a review of the functions and activities performed by the ICC was needed. Congress responded, we believe appropriately, by enacting last summer partial deregulation of the ICC's trucking functions and providing for a study of its remaining activities (P.L. 103-311). Intrastate trucking deregulation, enacted by Congress and signed into law last August by President Clinton (P.L. 103-305) will save consumers up to $8 billion per year. Section 210(b) of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA) provided that DOT study how the ICC could be further streamlined by elimination of unnecessary functions, and whether the remaining functions could best be performed at the ICC or elsewhere. We were directed to seek public comment on our findings and recommendations and present the report to Congress by the end of February 1995. We expect to be seeking

comment on our initial findings in the next week or so; however I will preview recommendations of special interest to this Subcommittee today.

Following the themes laid out in the National Performance Review that began in early 1993, and by the President in his State of the Union address earlier this week, the Administration's 1996 Budget will propose the elimination of the Interstate Commerce Commission. That Commission is a relic of nineteenth century government, created to address nineteenth century problems. It is not equipped for the opportunities open to us in the twenty-first century.

The mid and late 1880's, a period where the lack of transportation alternatives gave railroads a power and an arrogance that earned their owners the sobriquet of "robber barons," resulted in the creation of the ICC. This was long before the age of super highways, trucks, pipelines and air travel. For many areas of the country, it was rail or nothing. Railroads held the preeminent position. In 1885, railroads had twice the level of revenues as the federal government. Now the federal government takes in almost 30 times more revenue than the Nation's railroads.

That age is long over. Circumstances have dramatically changed. The most significant changes occurred fifteen years ago with the enactment of fairly comprehensive deregulatory legislation, specifically the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980. It is now time to write the final chapter.

In the 1996 Budget, the Administration will recommend that some of the ICC's outdated functions be eliminated. Those functions for which there is a need will be transferred to other federal agencies. The focus of today's hearing in on rail mergers. The Administration will propose that the evaluation of rail mergers be transferred to the Department of Justice under the antitrust laws.

Before I discuss rail mergers in detail, let me note in passing: deregulation is not a partisan issue. The Staggers and Motor Carrier Acts and the deregulation of the airline industry all took place under President Carter, and many Members of Congress from both parties have long been advocates of shedding unnecessary and harmful economic regulations. In this context, the Administration and Congress are not only seeking to eliminate burdensome and counterproductive regulations, we are seeking to repeal unnecessary functions and sunset unnecessary agencies as well.

In the process of examining the functions of the ICC, we have found the oversight of rail mergers to be one of the most complex and contentious issues. It is perhaps one of the few issues for which we have found no consensus among the individual railroads with whom we have met. I am sure you will get a sense of that disagreement in the course of the hearing today.

Rail mergers are currently reviewed by the ICC under the regulatory standards of the Interstate Commerce Act (ICA) (49 U.S.C. §11344). These standards provide for a "public interest" decision process. The process includes consideration of the effect of a proposed transaction on the adequacy

of transportation to the public; the effect of including, or failing to include, other rail carriers in the proposed transaction; the total fixed charges that would result from the proposed transaction; the interests of the employees; and whether the merger would have an adverse effect on competition among rail carriers.

The alternative to continuing the status quo is to repeal the ICA standards, make railroad mergers subject to the same antitrust laws applicable to other industries, and assign responsibility for reviewing such mergers to the Department of Justice (DOJ). Under this option, mergers would not be challenged unless the government finds the transaction is likely to "substantially lessen competition."

We have concluded that rail mergers would best be reviewed in the future by the Department of Justice, under the same Clayton Act standards used to evaluate mergers in nearly all other industries in the U.S. Let me tell you how we came to this conclusion.

As a part of our process in seeking public comment on the various ICC functions, we have done three things: first, we asked for comments on the ICC's October 1994 report in a Federal Register notice published on November 1, 1994, following which we received about 40 comments. Second, we have reached out to meet with individuals and groups -- including railroads, motor carriers, shippers and labor representatives -- that have asked to speak with our study team face-to-face. Third, DOT sponsored a conference on January 9 on the transportation industry of the future. The focus of this conference, which was open to the public, was to envision the rail, trucking,

water, and intermodal segments of the transportation industry in twenty or twenty five years and ask, if we could start over "from scratch", without an Interstate Commerce Act, how we would want to regulate those industries, if at all.

We have met with most of the Class I railroads and you will hear their views later this morning. Not surprisingly, the views we heard from the individual railroads differed partly on the basis of whether they are involved in a merger case currently docketed at the ICC. Rail labor favors continued review at the ICC or, as an alternative, at the Department of Labor, presumably under the current ICA standards. This no doubt reflects, in part, labor's view that the current labor protection standards for employees affected by a merger should continue. There are always labor issues arising from any merger transaction. However, these issues can still be addressed regardless of whether the Clayton Act or the ICA standards are applied. There is no reason why rail mergers could not be reviewed under the antitrust laws and labor protection continue to be provided before mergers are approved.

As I see it, there are two ways of looking at the railroad merger issue. On the one hand, there is the "business as usual" approach. On the other, there is the approach that challenges the status quo and asks whether the old way of doing things will still be valid in tomorrow's economy.

Under the first approach, some might argue that rail merger policy has worked fairly well in helping the railroad industry downsize and become more efficient for the 1990's and beyond. Would merger review under DOJ and the antitrust laws produce any substantially different results? If we look

at the post-Staggers Act period, there are not many differences between what DOJ has found and recommended in railroad merger cases and what the ICC has decided. Nevertheless, there appears to be a perception that rail mergers are approved more easily by the ICC than they would be by DOJ. The Committee will hear from my Department of Justice colleague on this and other issues, but it does not appear in our review of recent mergers that there was any major difference of opinion between the ICC and DOJ over merger cases.

If we take the second approach, we would have to ask ourselves whether any differences between the rail industry and other industries justify special treatment. In a way, all industries have unique characteristics. The question is whether those differences justify different treatment. Railroads have similarities to other network-type industries such as telecommunications and pipelines. Mergers in these industries are all reviewed under the same Clayton Act standards. Are railroads materially different from these industries or, for that matter, other transportation industries such as the airlines, which are now governed by Clayton Act standards? We do not believe that they are.

There used to be special treatment for airline mergers following the sunset of the Civil Aeronautics Board. It was not a success. When DOT had temporary authority over airline mergers, we approved virtually every proposed transaction, including a few transactions opposed by DOJ. As a result DOT was widely criticized at the time.

Neither Congress nor this Administration is interested in a "business as usual" approach that includes special treatment for one industry over others. It is always easier to stick with the status quo. However, we read the TIRRA mandate to be: re-examine every ICC function carefully and decide whether it continues to be appropriate or should be discontinued.

Following that mandate, and on the basis of our comprehensive analysis and review, we have concluded that rail mergers should be evaluated by the Department of Justice under the Clayton Act. Railroads are not fundamentally different from other industries. They do not need special protection or treatment and they would benefit from the shorter processing time for merger review under Clayton Act standards. Rail mergers with significant competitive issues would likely be resolved under the antitrust laws in less than a year, compared to two to three years under the ICA.

Clayton Act standards focus on the protection of competition and its attendant benefits to consumers and our society in general. There is no longer sufficient justification to prolong those special standards. Rail mergers should be regulated under the same basic antitrust standards that apply to nearly all other industries.

Madam Chairwoman, we have taken a fresh look at what the ICC does and, as I noted at the outset, concluded that many of its functions are outmoded and that there is no longer a need for a separate, freestanding agency. Some of its functions are still needed, mainly in the areas of rail rate regulation and motor carrier safety, and should be continued; most others should be eliminated. In the antitrust area, which you have focused on in this hearing,

we believe regulation of rail mergers should be consistent with the treatment of other industries. Eliminating the ICC which has its roots in another century is exactly what the National Performance Review is about. As the President said two days ago, we must get rid of yesterday's government to meet today's needs. The American people will ultimately be the beneficiaries of such action.

Madam Chairwoman, that concludes my testimony. I would be happy to answer any questions you and other Members of the Subcommittee may have.